Supreme Court, U.S.
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No. 01-

IN THE

Supreme Court of the United States

EUGENE B. BOWLER,

Petitioner,

v.

THE STATE OF MAINE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

EUGENE B. BOWLER
9 Rockbrook Drive
Campden, Maine 04843
(207) 236-4708

Pro Se

July 23, 2001

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

55 pp

QUESTIONS PRESENTED

I. Whether the United States District Court and The Court of Appeals correctly concluded that the plaintiff could not sue the Defendant because of sovereign immunity under the Eleventh Amendment?

II. Whether Maine's statute on Protection from Harassment and/or Temporary Order of Protection are unconstitutional or void because of vagueness, lack of due process and restricted my rights under the First, Fifth, Sixth, Ninth and Tenth Amendments and Article III, § 2 to the United States Constitution?

III. Whether the appellant's request to amend the caption in this case was timely?

THE PARTIES TO THE PROCEEDING

The parties to the proceedings in the United States Court of Appeals for the First Circuit are those in the caption.

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the First Circuit Eugene B. Bowler respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The Order of the Court of Appeals for the First Circuit is at (App. 30a). The En Banc Denial of the Court of Appeals for the First Circuit is at (App. 34a). The Memorandum of Decision and Order of the United States District Court is at (A. 21a). The Judgment of the United States District Court is at (A. 29a).

JURISDICTION

The opinions and judgment of the United States Court of Appeals for the First Circuit were entered on May 21, 2001. A rehearing *en banc* was denied on June 29, 2001. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

Filing of the petition was accomplished within ninety days of the Court of Appeal's order affirming the judgment of the United States District Court dismissing the petitioner's petition for declaratory judgment on the constitutionality of certain Maine statutes.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution to the United States, Article III, § 2, First Amendment, Fifth Amendment, Sixth Amendment, Ninth Amendment and Tenth Amendment. Relevant portions of the Maine statute 5 M.R.S.A. § 4651 *et seq.* reproduced in the Appendix at (A. 36a). 19-A M.R.S.A. § 4006.

STATEMENT OF THE CASE

The Plaintiff, Elizabeth Jane Boogusch, M.D., made a complaint for Protection from Harassment under 5 M.R.S.A. §§ 4651 *et seq.* against the Defendant Eugene Bowler on February 10, 2000 and a Temporary Order of Protection was issued under 19-A M.R.S.A. § 4006 on February 10, 2000. In lieu of a hearing both parties signed an agreement regarding the Plaintiff's complaint for Protection from Harassment (see A. 18a).

Appellant, Eugene B. Bowler sued Appellee, State of Maine, in as much as he asked for a Declaratory Judgment on the constitutionality of certain Maine statutes regarding Protection from Harassment and Temporary Order of Protection; the United States District Court dismissed my Petition on the grounds I lack standing and the court found "on the other hand the Court finds that Mr. Bowler has standing to pursue his claims that Maine's Protection from Harassment Statute is void for vagueness, violated his right to due process and restricted his rights under the First Amendment;" but these claims are also dis-

missed because of the Defendant's sovereign immunity! The District Court said, "although Mr. Bowler may have standing to pursue these constitutional challenges if he were to file an amended complaint that named a state officer as a defendant, Maine sovereign immunity prevents Mr. Bowler from asserting these claims against the state itself in federal court."

When the Appellant asked the Court of Appeals to allow him to amend the complaint as the district court had indicated they refused on the ground it was untimely.

REASON FOR GRANTING THE PETITION

Under a Temporary Order of Protection issued by the Maine District Court at Rockland (see enc. case Elizabeth Boogusch v. Eugene Bowler No. ROC-SA-00-48) my liberty was limited in certain respects as I could not go on a certain street and other restrictions put on me, which if I violated I could be in jail for up to 364 days. Certain freedoms were taken from me without due process of law provided me by the Fifth Amendment. The court order was given me by the Camden Police Department without me having a chance to present a defense and have counsel to defend me when the Plaintiff requested and received the order prayed for from the Maine District Court. Only if there is a history of violence or clear and present threat of it on the part of a Defendant may such a procedure be justified. Also if a Judge issues such an order he should not later hear the case as he may be biased in favor of the

Plaintiff. There is no jury trial under the statute which is a violation of the Sixth Amendment and Article III, § 2. Also there is warrantless arrest (§ 4659) which is a violation of the Fifth Amendment. The temporary order for protection (19-A M.R.S.A. § 4006) was obtained by the Plaintiff merely filling out the complaint form and checking a box that says "Motion for Temporary Order" "I am in immediate and present danger of physical abuse or extreme emotional distress from the defendant's conduct". Extreme emotional distress is a vague, amorphous, indefinite, rather meaningless term which should not be allowed as a reason from which flows a court order that does restrict a persons liberty and puts him in immediate danger of jail if he violates or is accused of violating this order, maybe by so little as even a word or wave to the Plaintiff. Violation of this order is a Class D crime and the defendant could be jailed up to 364 days and or fined up to $2,000.00. What kind of justice is check the box justice? It suggests a rather summary or out of hand justice. The term harassment is a rather vague, meaningless term. What do confrontation and intimidation mean? Just because one feels intimidated, confronted or threatened does not mean they are actually threatened. Part or all of these Maine statutes are unconstitutional also under the Ninth and Tenth Amendments which give people certain retained rights and reserved powers which would include the right to liberty, freedom from fear, unjust confinement or fear of such. These statutes metamorphose from a civil status into a criminal status; a violation of the due process of the Fifth Amendment. These Maine statutes violate the First Amendment as

regards freedom of speech and by implication freedom of expression. These statutes are an insult on the constitutional protection guaranteed us. The judge in granting the Plaintiff the Temporary Order for Protection evidently allowed it because of the Elizabeth Jane Boogusch, M.D.'s complaint regarding professions of love, gifts, letters, phone calls on an answering machine, speech to a cabbie, travel on a public road all expressions of free speech and self-expression protected by the First Amendment as long as they are not threatening in fact. Most, if not all, of the gifts and letters I sent her and messages I put on her answering machine as well as some gifts I gave to her in her office occurred before she dismissed me as a patient.

Also under the Temporary Order of Protection and a Protection from Harassment Order even a non threatening greeting by wave of hand or word of mouth to say nothing of a letter or phone call to the Plaintiff would almost certainly get the defendant in jail — a clear violation of the First Amendment freedom of speech!

This statute gives a Plaintiff a chance to cloud or obscure the real cause of the complaint with other issues. In this case please note Elizabeth Jane Boogusch, M.D. said "Mr. Bowler threatened to report me to the board of licensure"? As regards the issue of sovereign immunity and the Eleventh Amendment, it says the judicial power of the United States shall not extend to any suit commenced or prosecuted against one of the United States by citizens of another state. I am not a citizen of another state. Also if there is

a conflict or clash between amendments the more important one should prevail and override the less. Surely the First Amendment which guarantees free speech and expression and the Fifth Amendment protecting due process and the Sixth protecting jury trial and the Ninth and Tenth protecting reserved rights are far more important than the Eleventh sovereign immunity!

I requested the Court of Appeals to allow me to amend my petition as the District Court indicated to avoid the Eleventh Amendment issue of sovereign immunity but I did not do it until after the Court of Appeals affirmed the District Court ruling at which time I asked for an *en banc* review and or permission to amend complaint on May 23, 2001.

CONCLUSION

It is regrettable indeed if legal questions such as the Eleventh Amendment sovereign immunity issue can be used and interposed to frustrate the United States Constitution and the "Bill of Rights" with all the protections (the great equalizer) they afford the weak individual citizen vis-a-vis a powerful state with armed agents to work its will.

For all the foregoing reasons Petitioner, Eugene B. Bowler respectfully prays that his petitioner for writ of certiorari should be granted.

Respectfully submitted,

EUGENE B. BOWLER
9 Rockbrook Drive
Camden, Maine 04843
(207) 236-4708

Petitioner Pro Se

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APPENDIX A

STATE OF MAINE

DISTRICT COURT
Location ROCKLAND
Docket No. ROC-SA-00-48

Elizabeth Boogusch
Plaintiff

v.

SUMMONS
PROTECTION ORDER

Eugene Bowler
Defendant

TO THE DEFENDANT:

The Plaintiff has begun a Protection from Abuse/~~Harassment~~ action against you. If you wish to oppose this action, you or your attorney must appear before the Court on February 29, 2000 at 1:00 ~~AM~~/PM. The court is located at: 62 Union Street, Rockland, ME 04841

A full hearing on plaintiff's complaint will be heard at that time.

IMPORTANT WARNING: IF YOU FAIL TO APPEAR AT THE COURT AT THE ABOVE STATED TIME, OR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, COURT ORDERS EFFECTIVE FOR UP TO TWO YEARS MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE GRANTING ANY OR ALL OF THE RELIEF REQUESTED IN THE COMPLAINT. THE VIOLATION OF THESE

ORDERS MAY CONSTITUTE A CLASS D CRIME OR CONTEMPT OF COURT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO APPEAR AT THE REQUIRED TIME. YOU MAY OBTAIN A BOOKLET OF INFORMATION ABOUT PROTECTION FROM ABUSE/HARASSMENT CASES FROM THE COURT CLERK.

(Court Seal)

/s/ _____
Clerk

Date: February 10, 2000

Elizabeth Boogusch

Name and address of plaintiff's attorney

****

RETURN OF SERVICE

_____, ss.

On _____, at _____ AM/PM, I made service of the ☐ Complaint ☐ Summons for Protection of Abuse/Harassment ☐ Temporary Order for Protection and ☐ Order of Continuance, upon the defendant _____ By delivering a copy of each document to the defendant in hand at:

_____
(location where served)

_____
Authorized Officer

LAW ENFORCEMENT OFFICER: Return original Summons to the court at the address shown above.

APPENDIX B

STATE OF MAINE

DISTRICT COURT
Location _____
Docket No. _____

Elizabeth Boogusch
Plaintiff

v.

Eugene Bowler
Defendant

COMPLAINT FOR PROTECTION FROM HARASSMENT (5 M.R.S.A §§ 4651 et seq.)

1. My full name, age, present street address, city and telephone number are as follows (list only your name if address is to be kept confidential): Elizabeth J. Boogusch, 45y
If different, my mailing address is:_____

2. My former residence (if different from above), which I have left to avoid harassment, is as follows, (street address, city, state): _____

3. The full name, age, present street address, city, state and telephone number of the person harassing me (the defendant) is as follows: Eugene Bowler, 63 y, Rockbrook Dr., Camden, ME 04843

If different, Defendant's mailing address is: _____

4. I base my claim for protection from harassment on the following facts: *Describe the harassment, and include who committed it, when and where it occurred. (If additional space is needed attach another sheet.)* I am a PHYSICIAN. As my patient, MR. BOWLER repeated declared he was in love with me and sent me unwanted gifts and letters and left telephone messages on my answering machine. In the presence of a hospital security guard on one occasion and on every occasion that he presented to the office I asked him to cease this behavior and find another physician. I was recently alerted by his taxi driver, Mr. Gordon Talbot, that he was talking about me incessantly (worse than ever) and had coerced Mr. Talbot into driving around my house. He walks around my neighborhood all the time in hopes of seeing my vehicle. He has been seen by my neighbors and most recently by my office manager standing in the driveway of my home.

After officially discharging him from my practice via certified letter, he has sent me 3 letters which are in the possession of Camden Police Dept. He has threatened to "report me to the board of licensure."

I do fear him because of his unpredictable and abnormal emotional state, and I live alone.

I request that he not be allowed on Cedar Street, because witnesses have seen him walking in front of my house and onto my driveway.

5. I (have) (Have not) contacted law enforcement officials about the harassment.

I ASK THE COURT TO:

☑ (a) Order the defendant to stop harassing me.

☑ (b) Order the defendant to have no contact with me, directly or indirectly.

☑ (c) Order the defendant not to enter my residence.

☑ (d) Order the defendant to refrain from repeatedly, and without reasonable cause, following me or being at, or in the vicinity of, my home, school, business or place of employment.

☑ (e) Order the defendant to refrain from interfering with my property.

☐ (f) Order the defendant to pay monetary compensation for losses that I have incurred as the result of the harassment.

☐ (g) Order the defendant to pay my attorney's fees and court costs and to order any other necessary and proper relief.

Date: 2.10.00 /s/
Signature of Plaintiff

SA-011, Rev. 04/98

APPENDIX C

PROTECTION ORDER SERVICE INFORMATION

DEFENDANT

Defendant's Name: Eugene Bowler

Home Address: Rockbrook Drive, Camden

Apartment No. and / or floor: _____

Color of house or other description: _____

If living with another person, other person's name: living alone

Day / Work Telephone: _____ /Evening / Home Telephone: _____.

Hours defendant will most likely be home:_____

Name of Employer: unemployed

Work Address: _____

Work Schedule: S M T W Th F S Hours Worked:__
(Circle Work Days)

Hours Worked: _____ AM/PM to _____ AM/PM

PHYSICAL DESCRIPTION (If known)

Birth Date: = 63 y
Height: 6 feet

Weight: 200 lbs
Hair Color: White Shaved
Eye Color: _____

VEHICLE (If known)

Make and Year: does not drive
Type/Model: _____
Color: _____
Registration No. and State: _____

If you are unable to provide the above information, please list below the name, address and telephone number of anyone who can help the serving officer locate the defendant: _____
_____

ADDITIONAL INFORMATION

Does the defendant own a firearm or other weapon? He may (has shown me photographs of him w/ Whiting rifle)

If so, where is the weapon usually kept? _?

Does the defendant have a history of violence? _?

Is there anything else the serving officer should know about the defendant? _____

PLAINTIFF

Plaintiff's Name: Elizabeth Jane Boogusch, MD

Address (unless confidential): _____

Day / Work Telephone: _____ Evening / Home Telephone: _____
(Voice mail available)

SA-005, Rev. 04/98

APPENDIX D

☑ MOTION FOR TEMPORARY ORDER

I am in immediate and present danger of physical abuse or extreme emotional distress from the defendant's conduct.

I have made the following efforts to notify the defendant of my request for a temporary order: I have talked with Lt. Roberts @ Camden Police Dept. I have sent a letter to the defendant discharging him from my practice.

I therefore request that a temporary order for protection from harassment be issued.

Date: 2.10.00 /s/_____
Signature of Plaintiff

****

STATE OF MAINE

Knox County

Personally appeared the above named Elizabeth Boogusch and signed and made oath to the truth of the statements in the above Complaint, and, if completed, Motion for Temporary Order, before me,

Date: 2-10-00 /s/_____
Asst. Clerk

****

ORDER

☐ The motion for a temporary order is **granted**. The court will issue a Temporary Order for Protection from Harassment for the following reasons: _____

_____

☐ The motion for a temporary order is **denied** for the following reasons:

☐ The court finds it reasonable that efforts to be made to give the defendant notice that the plaintiff is seeking this Order and such efforts have not been made.

☐ The allegations in the sworn complaint are insufficient to support a finding that the plaintiff may be in immediate and present danger of physical abuse from the defendant or may suffer extreme emotional distress as the result of the defendant's conduct.

☐ The clerk shall schedule a hearing on the complaint within 21 days. The plaintiff is responsible for service of the complaint and summons.

☐ _____

_____

Date: _____ _____

Judge/Justice

APPENDIX E

STATE OF MAINE

DISTRICT COURT
Location ROCKLAND
Docket No. ROC-SA-00-48

Elizabeth Boogusch Plaintiff

v.

Eugene Bowler Defendant

TEMPORARY ORDER FOR PROTECTION AND NOTICE OF HEARING (19-A M.R.S.A § 4006) (5 M.R.S.A. § 465)

Upon consideration of plaintiff's complaint and request for a temporary order, it is hereby ORDERED that:

☒ 1. The defendant is prohibited from having any contact with plaintiff, directly or indirectly;

☒ 2. The defendant is prohibited from imposing any restriction upon the person or liberty of the plaintiff;

☒ 3. The defendant is prohibited from threatening, assaulting, molesting, harassing, or otherwise disturbing the peace of the plaintiff;

☒ 4. The defendant is prohibited from, repeatedly and without reasonable cause, fol-

lowing the plaintiff or being at or in the vicinity of the plaintiff's home, school, business or place of employment;

☐ 5. The defendant is prohibited from entering the family residence or premises of the separate residence of the plaintiff at (list, unless confidential): _____

_____

☒ 6. The defendant is prohibited from taking, converting or damaging property in which the plaintiff may have legal interest; and

☐ 7. The plaintiff is awarded temporary custody of the following minor child(ren) residing in the household (List names and dates of birth): _____

_____

This Order is effective forthwith and will remain in effect until further order of the court.

WARNING TO THE DEFENDANT: VIOLATION OF THIS ORDER IS A CLASS D CRIME. AS LONG AS THIS ORDER IS IN EFFECT, YOU MUST OBEY IT. NO ONE, INCLUDING THE PLAINTIFF, CAN GIVE YOU PERMISSION TO VIOLATE THE PROVISIONS OF THIS ORDER.

A hearing on plaintiff's complaint will be held at 1:00 PM on February 29, 2000 at the District Court located at:

62 Union Street, Rockland, ME 04841

If the defendant desires to dissolve or modify the above Temporary Order, the defendant must so move. Otherwise, a final hearing will be held at the above date and time.

Copies of this Order shall be furnished by the clerk to the law enforcement agency with jurisdiction in the location of the plaintiff's residence. It is ORDERED that a copy of this Order, the complaint and summons be served on the defendant by Camden Police Dept
OR ANY OTHER LAW ENFORCEMENT AGENCY.

Date: February 10, 2000 _____
Judge/Justice

A true copy, attest: _____
(Deputy) Clerk

SA-002, Rev. 04/98

APPENDIX F

STATE OF MAINE

DISTRICT COURT
Location ROCKLAND
Docket No. ROC-SA-00-48

Elizabeth Boogusch Plaintiff

v.

Eugene Bowler Defendant

ORDER OF CONTINUANCE
EXTENSION OF TEMPORARY ORDER
NOTICE OF HEARING

A hearing was set for this date. The hearing is continued for the reason:

☐ The parties have agreed to a continuance.

☐ The defendant was not served.

☐ Other: Continued to 2/27/2001 for hearing on the complaint at 1:00 on that day. The temporary order remains in effect only until 3/3/00 at 4:00 P.M. The parties have entered an informal agreement. If its terms are violated, the plaintiff can ask for an earlier hearing.

Pending the hearing, the temporary order will remain in full force and effect.

The clerk shall set a new date and time and shall notify the parties and any law enforcement agencies named in the temporary order.

Date: 2/29/00 /s/
Judge, District Court

****

NOTICE OF HEARING

The parties are hereby notified that the hearing in this matter is set for _____ _____ at _____ (am) (pm) at the District Court located at:

_____
(Deputy) Clerk

A true copy, attest:

_____
(Deputy) Clerk

SA-007, Rev. 04/98

APPENDIX G

LETTERS FROM DEFENDANT TO PLAINTIFF IN HARASSMENT CASE:

Letter 1:
Rx
E. Boogusch

Liz:

I regret that you are not professional enough to tell me in person or at least by phone why you are dropping me as a patient. Why did you have to hide behind an employee? It is also regrettable you are not used to caviar you seem to enjoy bananas! When you are eighty you will be creeping around the wards of your domain at PBMC at 3:41 a.m. sucking up crumbs of gratitude from harmless, hopeless and helpless dying patients. As you said you are not a very nice person, indeed hardly a person at all, as you have no heart just a monstrous huge brain!

See my darling beauty what you caused me to write, yet you are still a sweet little girl from your cute little feet to your crowning auburn glory.

With love forever,

Gene

February 2, 2000
Camden, Maine

Letter 2:

Dear Dr. Boogusch:

My worst fear being out of your friendship has come to pass; as you know my greatest horror was the thought of never seeing you again yours was probably the inverse function of this! This is especially sad for me as I complied with all your orders after our talk of September 8th and you listen to a rather self righteous person who was very hostile to me and would give me no chance to respond. I now realize you can't tolerate being trapped in a long term commitment; I should have been content to see you every few months and PRN instead of pressing for more. Still I don't feel I deserve to be kicked out as this is very painful and a source of great sadness – the ultimate punishment. It is not a little scary to be without an understanding physician as I fall into old age. I am sorry for any anguish this matter has caused you and regret even more that you are in a mood of anxiety and hostility towards me for all I every had for you was affection and respect. Anxiety and hostility are heavy burdens to bear and I would suggest there antidote is existential and transcendental love. I apologize for my note of February 2 it was sent in deep hurt and sorrow. Please have mercy on me and retain me. I wish you peace dearest Elizabeth.

Cordially,

Eugene Bowler
February 9, 2000
Camden, Maine

APPENDIX H

STATE OF MAINE

District Court
Rockland
Dkt No. ROC-SA-00-48

ELIZABETH BOOGUSCH,
Plaintiff

v.

EUGENE BOWLER,
Defendant

AGREEMENT
Re: Plaintiff's Complaint
For Protection from Harassment

Plaintiff was granted a Temporary Order for Protection from Harassment from Defendant on February 10, 2000. Hearing on the permanent order was set for February 29, 2000 at 1 pm. In lieu of hearing, the parties reached the following agreement:

1. The February 10, 2000 Temporary Order shall continue in effect until March 3, 2000 unless Plaintiff's counsel certifies to the Court that no final agreement was reached in which case the matter shall be reset for hearing on the permanent order;

2. If the parties reach agreement as reflected by their or their representatives' signa-

tures below, the Temporary Order shall be dismissed but the Complaint shall be continued for hearing on February 27, 2001. Should Defendant violate the terms of the Agreement, Plaintiff may ask for an earlier hearing based on the allegations stated in the pending Complaint for Protection. If there is no violation of the Agreement on or before February 27, 2001, Plaintiff's Complaint shall be dismissed.

3. This Agreement shall be submitted to the Court for inclusion in the record.

4. Defendant shall have no contact with Plaintiff either direct or indirect, including but not limited to the following prohibitions:

- Defendant shall not be on Cedar Street;
- Defendant shall not be in the vicinity of Plaintiff's office, except to the extent necessary to attend a scheduled appointment with another physician in the same building;
- Defendant shall not write to Plaintiff;
- Defendant shall not contact Plaintiff by telephone either at her home or office; and,
- Defendant shall not seek medical care or consultation from Plaintiff or her office staff.

5. Should Plaintiff be compelled to seek a permanent order for Protection from Harassment as a consequence of any violation of this Order,

Defendant shall pay Plaintiff's attorney's fees up to $1000.00.

6. This Agreement shall remain in effect until March 2, 2001.

Dated: March 2nd, 2000	Dated: 3-10-00
/s/	/s/
Defendant	Plaintiff
/s/	/s/
Defendant's Counsel	Plaintiff's Counsel

APPENDIX I

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

EUGENE B. BOWLER,	)	
	)	
Plaintiff	)	
	)	
v.	)	**Civil No. 00-39-B**
	)	
STATE OF MAINE,	)	
	)	
Defendant	)	

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER

Before the Court is Defendant's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6) (Docket #4). For the reasons discussed below, the Court will grant the Motion.

Plaintiff, Eugene Bowler, appearing pro se, has filed this case against the State of Maine. Mr. Bowler argues that the State has violated his rights under the First, Fifth, Sixth, Ninth, and Tenth Amendments. These violations allegedly began on February 10, 2000, when Dr. Boogusch, a physician who had previously treated Mr. Bowler was prohibited from having any contact with Dr. Boogusch and from "repeatedly and without reasonable cause . . . being at or in the vicinity of [the doctor's] home, school, business or place of employment." Temp. Order for Protection

(Rockland Dist. Ct. No. ROC-SA-00-48) (dated Feb. 10, 2000).[1] In addition to these written prohibitions, Mr. Bowler claims that the Camden Police Officer who served him with the TOP simply told him to "stay off" Dr. Boogusch's street. *Am. Compl.* ¶ 3 (Docket #3).

The Rockland District Court issued the challenged TOP under Maine's Protection from Harassment Statute, 4 M.R.S.A. § 4651 *et seq.* Pursuant to the statute, Dr. Boogusch filed a sworn petition in which she certified that she was "in immediate and present danger." *See* 5 M.R.S.A. § 4654. Her complaint explained that although Dr. Boogusch dismissed Mr. Bowler from her practice, Mr. Bowler had sent her numerous gifts and letters, repeatedly left telephone

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[1] In this case, both parties have attached exhibits to their various pleadings. Specifically, the Plaintiff filed his original Complaint with (1) the Summons Protection Order, (2) the Temporary Order for Protection and Notice of Hearing, and (3) the Complaint for Protection from Harassment filed by Dr. Boogusch. *See Compl.* (Docket #1). Defendant then attached to its Motion to Dismiss (1) the Order of Continuance (Def. Ex. A) and (2) Agreement re: Plaintiff's Complaint For Protection from Harassment (filed with the Rockland District Court on March 16, 2000) (Def. Ex. B). *See* Def.'s Mot. to Dismiss (Docket #4). The Court has found these materials helpful in deciphering Plaintiff's pro se complaint. While ordinarily the Court's consideration of such documents would require the Court to convert a motion under Rule 12(b)(6) to a motion for summary judgment, in this case the documents fit within a narrow exception. Namely, all of the documents listed above are "official public records . . . central to plaintiff's claim" and their authenticity is not disputed. *See Watterson v. Page*, 987 F.2d 1, 3-4 (1st Cir. 1993). Therefore, the Court may consider these documents without converting Defendant's Motion to Dismiss to a motion for summary judgment. *See id.* at 4.

messages on her answering machine, and was frequently seen walking around the doctor's home and driveway. Based on this intimidating behavior, the Court granted Dr. Boogusch a TOP restraining Mr. Bowler.[2]

Under Maine's statute, any person subject to a TOP may move for its dissolution or modification at a court hearing on two days notice to the person who sought the TOP. *See* 5 M.R.S.A. § 4654(6). If no such request for a hearing is made, the court holds a full hearing within 21 days of the filing of a petition. *See* 5 M.R.S.A. § 4654(1). In this case, Mr. Bowler did not request dissolution or modification of the TOP. In

---

[2] Under the TOP, the court ordered that:

1. Mr. Bowler is prohibited from having any contact with Dr. Boogusch directly or indirectly;

2. Mr. Bowler is prohibited from imposing any restriction upon the person or liberty of the plaintiff;

3. Mr. Bowler is prohibited from threatening, assaulting, molesting, harassing, or otherwise disturbing the peace of Dr. Boogusch;

4. Mr. Bowler is prohibited from, repeatedly, and without reasonable cause, follow Dr. Boogusch or being at or in the vicinity of her home, school, business or place of employment;

5. Mr. Bowler is prohibited from taking, converting or damaging property in which Dr. Boogusch may have a legal interest.

See Temp. Order for Protection (Rockland Dist. Ct. No. ROC-SA-00-48) (dated Feb. 10, 2000).

fact, at the scheduled hearing on February 29, 2000, Mr. Bowler agreed to a continuance. *See* Def.'s Ex. A (Docket #4). Then, before a hearing was ever held, Mr. Bowler entered into informal agreement with Dr. Boogusch. *See* Def.'s Ex. B (Docket #4). As a result, the TOP expired on March 3, 2000. Nonetheless, Mr. Bowler filed this case against the State of Maine on March 7, 2000, claiming that the TOP in effect from February 10, 2000, through March 3, 2000, violated a long list of his constitutional rights.[3]

The State of Maine argues this case, as it is currently postured, violates the Eleventh Amendment's protection of Maine's sovereign immunity. While Defendant has suggested that this is a jurisdictional issue, the First Circuit has not endorsed this view. *See Parella v. Retirement Bd. of the Rhode Island Employees Retirement Sys.*, 173 F.3d 46, 55-57 (1st Cir. 1999). Rather, the First Circuit has explained that "the relevant maxim establishing jurisdiction, but rather that courts should 'not reach constitutional arguments in advance of the necessity of deciding them.'" *Id.* (*citing American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 62 (1999)).

Thus, the Court considers Defendant's other arguments for dismissal before addressing

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[3] The Court reads Mr. Bowler's complaint and the subsequent amendments (Docket #103) as alleging constitutional violation while the TOP was in effect. To the extent, Mr. Bowler is alleging Defendant continued to violate his constitutional rights after March 3, 2000, such claims are mooted by Mr. Bowler's entering into an informal agreement with Dr. Boogusch.

the issue of sovereign immunity. First, Defendant argues that Mr. Bowler lacks standing. To have standing, Mr. Bowler must prove that (1) he personally suffered some actual or threatened injury; (2) the injury can be fairly traced to the TOP; and (3) the injury likely will be addressed by a favorable decision from the court. *See Berner v. Delahanty*, 129 F.3d 20, 24 (1st Cir. 1997) (*citing New Hampshire Right to Life PAC v. Gardner*, 99 F.3d 8, 13 (1st Cir. 1996)), *cert. denied* 523 U.S. 1023 (1998). Additionally because Mr. Bowler seeks only injunctive and declaratory relief, he must show "an invasion of a legally protected interest which is . . . concrete and particularized, together with a sufficient likelihood that he will again be wronged in a similar way." *Id.* (*quoting Lyons*, 461 U.S. 95, 111 (1983)).

The Court notes that the type of relief Mr. Bowler has standing to seek is more limited than his pleadings suggest. Because the TOP lapsed before this suit was filed, Mr. Bowler lacks standing to seek injunctive relief. *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 109 (1998) (finding that injunctive relief will not redress an injury where there is no "continuing violation or likelihood of future violation"). Therefore, the Court considers whether Mr. Bowler has standing to seek declaratory relief on his various claims.

Under the three-part test for standing laid out above, many of Mr. Bowler's claims crumble. First, Mr. Bowler has not alleged that he plans to engage in harassing behavior that would once again subject him to a TOP. *See Berner*, 129 F.3d

at 24 (finding plaintiff had standing because he vowed to engage in similar behavior again.); *Brown v. Hot, Sexy & Safer Prod.*, 68 F.3d 525, 529 (1st Cir. 1995) (explaining that "past exposure to harm will not in and of itself confer standing upon a litigant to obtain equitable relief"). Thus, the likelihood that Mr. Bowler will be wronged again in a similar way is questionable.

More importantly, Mr. Bowler has failed to show that he has personally suffered an actual or threatened injury to many of the constitutional rights listed in his complaint and amendments thereto. In fact, the prohibitions listed in the TOP focus on preserving Dr. Boogusch's liberty rather than limiting Mr. Bowler's constitutional rights. *See supra note 2.* Specifically, the limits placed on Mr. Bowler in the TOP neither violated any of his rights under the Fifth, Sixth, Ninth or Tenth Amendments, nor did the TOP cause any injury in fact to Mr. Bowler's right to a trial by jury or subject him to warrantless arrest. *See* Wright Miller & Copper, Federal Practice and Procedure 2d §3531.4 at 421 ("It is not enough that the plaintiff can point to a plausible injury to a significant interest.") For this reason, the Court finds that Mr. Bowler lacks standing to bring claims under the Fifth, Sixth, Ninth or Tenth Amendments and the Court declines to address these alleged constitutional violations on the merits.

On the other hand, the Court finds that Mr. Bowler has standing to pursue his claims that Maine's Protection from Harassment Statute is void for vagueness, violated his right to due process, and restricted his rights under the First

Amendment.[4] In considering these claims, the Court must accept all of Mr. Bowler's factual averments and indulge every reasonable inference in his favor. *See Aulson v. Blanchard*, 83 F.3d 1, 3 (1st Cir. 1996). Considering the facts in this light, the Court is not prepared to say that Mr. Bowler "cannot recover on any viable theory." *Correa-Martinez v. Arrillaga-Blendez*, 903 F.2d 49, 52 (1st Cir. 1990).

Nonetheless, before reaching these various constitutional arguments, the Court returns to Maine's sovereign immunity as the threshold constitutional question raised in the Defendant's Motion to Dismiss. Quite simply, Plaintiff's case, as it is currently captioned, is barred under the doctrine of sovereign immunity. *See Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974) (explaining that under the Eleventh Amendment "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State"). Although Mr. Bowler may have standing to pursue these constitutional challenges if he were to file an amended complaint

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[4] Defendant argues that even if Mr. Bowler has standing to pursue these claims, the claims are moot because Mr. Bowler is no longer subject to the TOP. If Bowler's claim was moot, there is no longer Article III jurisdiction because there is no case or controversy. *See Parella*, 173 F.3d at 57 (*citing SEC v. Mecial Comm. for Human Rights*, 404 U.S. 403, 407 (1972)). In this case, Mr. Bowler's challenge to Maine's TOP statute falls within an exception to the mootness doctrine because it is a wrong that is capable of repetition and yet evades review. *See Nollet v. Justices of the Trial Court*, 83 F.Supp.2d 204, 209 n.4 (D. Mass. 2000) (explaining that a similar challenge to a similar Massachusetts statute would fall within the same exception to the mootness doctrine).

that named a state officer as the defendant, Maine's sovereign immunity prevents Mr. Bowler from asserting these claims against the State itself in federal court. *See Ex parte Young*, 209 U.S. 123, 159-60 (1908). *See also Alden v. Maine*, 119 S.Ct. 2240, 2263 (1999) (explaining that allowing certain suits for declaratory and injunctive relief against state officers under the *Ex parte Young* exception is necessary "if the Constitution is to remain the supreme law of the land").

Pursuant to the First Circuit's instruction that judicial restraint allows a Court to avoid "Eleventh Amendment questions where there are other dispositive issues," *Parella*, 173 F.3d at 55, the Court dismisses Plaintiff's claims under the Fifth, Sixth, Ninth and Tenth Amendments because the Plaintiff lacks standing. Plaintiff's remaining claims that the statute in question is void for vagueness and violates his right to due process as well as his rights under the First Amendment are also dismissed because of the Defendant's sovereign immunity.

Accordingly, it is ORDERED that the Motion to Dismiss under Rule 12(b)(2) & (6) by Defendant State of Maine, be, and it is hereby, GRANTED.

/s/
GENE CARTER
District Judge

Dated at Portland, Maine this 18th day of July, 2000.

APPENDIX J

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

EUGENE B. BOWLER,	)	
	)	
Plaintiff	)	
	)	
v.	)	**Civil No. 00-39-B**
	)	
STATE OF MAINE,	)	
	)	
Defendant	)	

JUDGMENT

Pursuant to the Memorandum of Decision and Order on Defendant's Motion to Dismiss, entered by the Court on July 19, 2000, JUDGMENT is hereby entered for the Defendant and against the Plaintiff.

Dated this 19th day of July, 2000.

WILLIAM S. BROWNELL, CLERK

By: /s/_____
Harriett D. Jefferson
Deputy Clerk

APPENDIX K

[NOT FOR PUBLICATION-NOT TO BE CITED AS PRECEDENT]

United States Court of Appeals
For the First Circuit

No. 00-2010

EUGENE B. BOWLER,
Plaintiff, Appellant,

v.

STATE OF MAINE,
Defendant, Appellee.

APPEAL FROM THE UNITED STATE DISTRICT COURT FOR THE DISTRICT OF MAINE
[Hon. Gene Carter, U.S. District Judge]

Before
Torruella, Chief Judge,
Campbell and Cyr, Senior Circuit Judges.

Eugene B. Bowler on brief pro se.

Andrew Ketterer, Attorney General, Paul Stern, Deputy Attorney General, Amy M. Sneirson, Assistant Attorney General, and William R.

Stokes, Assistant Attorney General, on brief for appellee.

Order of The Court
Entered: May 21, 2001

Per Curiam. The judgment is affirmed substantially for the reasons set forth in the district court's opinion. To clarify one misunderstanding voiced by plaintiff: although the Eleventh Amendment by its terms refers only to suits against a State by citizens of another State, the Supreme Court has "extended the Amendment's applicability to suits by citizens against their own States." Board of Trustees of Univ. of Alabama v. Garrett, 121 S. Ct. 955, 962 (2001); accord, e.g., Strahan v. Coxe, 127 F.3d 155, 166 (1st Cir. 1997).

Affirmed. See Loc. R. 27(c).

APPENDIX L

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 00-2010

EUGENE B. BOWLER
Plaintiff-Appellant

v.

MAINE, STATE OF
Defendant-Appellee

CORRECTED JUDGMENT

***Entered: May 21, 2001**

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Maine.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: Affirmed:

By The Court:
Phoebe Morse

/s/_____
Chief Deputy Clerk

CC: Amy M. Sneirson, Esq.
Paul Stern, Esq.
Eugene B. Bowler

Certified Copies: *Honorable Gene Carter
***William Brownell, Clerk**

Certified and Issues
As mandate under
Fed. R. App. P. 41

/s/_____
Clerk

/s/_____
Deputy Clerk

JUL 06 2001

APPENDIX M

United States Court of Appeals
For the First Circuit

No. 00-2010

EUGENE B. BOWLER,
Plaintiff, Appellant,

v.

STATE OF MAINE,
Defendant, Appellee.

No. 01-1489

IN RE: EUGENE B. BOWLER,
Petitioner.

Before
Boudin, Chief Judge,
Cambell and Cyr, Senior Circuit Judges,
Torruella, Selya, Lynch and Lipez,
Circuit Judges.

ORDER OF COURT

Entered: June 29, 2001

In No. 00-2010, the motion to amend complaint is denied as untimely. In both No. 00-2010 and 01-1489, the panel of judges that rendered the decisions having voted to deny the petitions for rehearing, and the majority of judges in regular, active service not having voted to rehear the cases en banc, it is ordered that the petitions for rehearing and suggestions for rehearing en banc be denied.

By the Court:

JANICE M. O'NEIL

Acting Clerk

CC: Amy M. Sneirson, Esq.
Paul Stern, Esq.
Eugene B. Bowler

APPENDIX N

RELEVANT PORTIONS OF THE MAINE STATUTES — PROTECTION FROM HARASSMENT

§ 4651. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Court. "Court" means any District Court and, with regard to section 4659, the tribal court of the Passamaquoddy Tribe or the Penobscot Nation.

2. Harassment. "Harassment" means:

A. Three or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to property and that do in fact cause fear, intimidation or damage to property;

B. Three or more acts that are made with the intent to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution of Maine or the United States Constitution; or

. . . . .

§ 4652. Filing of petition; jurisdiction

Proceedings under this chapter must be filed, heard and determined in the District Court of the division in which either the plaintiff or the defendant resides. If the plaintiff has left the plaintiff's residence to avoid harassment, the plaintiff may bring an action in the division of the plaintiff's previous residence or new residence.

The District Court has jurisdiction over protection from harassment petitions. If a District Court judge is not available in the division in which a complaint requesting a temporary order is to be filed, the complaint may be presented to any other District Court Judge or to any Superior Court justice who has the same authority as a District Court judge to grant or deny the temporary order.

. . . . .

§ 4653. Commencement of proceedings

1. Filing. Any person who has been a victim of harassment, including a business, may seek relief by filing a sworn petition in an appropriate court alleging that harassment.

. . . . .

§ 4654. Hearings

1. Full hearing. Within 21 days of the filing of a petition, a hearing shall be held at which the

plaintiff shall prove the allegation of harassment by a preponderance of the evidence.

2. Temporary orders. The court may enter any temporary orders, authorized under subsection 4, without written or oral notice to the defendant or the defendant's attorney if:

A. It appears clearly from a verified petition or an affidavit accompanying the petition that:

(1) Before the defendant or the defendant's attorney can be heard, the plaintiff or the plaintiff's employees may be in immediate and present danger of physical abuse from the defendant or in immediate and present danger of suffering extreme emotional distress as a result of the defendant's conduct or the plaintiff's business property is in immediate and present danger of suffering substantial damage as a result of the defendant's actions;

(2) Either the plaintiff has or has not contacted any law enforcement officials concerning the alleged harassment; and

(3) The plaintiff has provided sufficient information to substantiate the alleged harassment;

B. When reasonable, the plaintiff or the court has made reasonable efforts to give written or oral notice to the defendant or the defendant's attorney that the plaintiff is seeking a temporary order; and

C. The court provides written reasons for entering a temporary order.

. . . . .

§ 4655. Relief

1. Protection order; consent agreement. The court, after a hearing and upon finding that the defendant has committed the harassment alleged, may grant any protection order or approve any consent agreement to bring about a cessation of harassment, which may include:

A. Directing the defendant to refrain from harassing, threatening, assaulting, molesting, attacking or otherwise abusing the plaintiff or the plaintiff's employees;

B. Directing the defendant to refrain from going on the premises of the plaintiff's residence or property, provided that the court may not use this subsection to evict a defendant from the rental premises in an action brought by a plaintiff;

C. Directing the defendant to refrain from interference with or destruction of the plaintiff's property;

C-1. Directing the defendant to refrain from repeatedly and without reasonable cause:

(1) Following the plaintiff; or

(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment;

. . . . .

F. Entering any other orders determined necessary or appropriate in the discretion of the court.

If the court enjoins the defendant under this subsection, and the enjoined conduct constitutes harassment under Title 17-A, section 506-A, the court shall include in the order a warning in conformity with Title 17-A, section 506-A.

. . . . .

§ 4658. Procedure

1. Civil rules apply. Unless otherwise indicated in this chapter, all proceedings shall be in accordance with the Maine Rules of Civil Procedure. Appeals may be taken as provided by the Maine Rules of Civil Procedure and may be only for error of law or abuse of discretion.

. . . . .

§ 4659. Violation

1. Crime committed. Violation of a temporary, emergency, interim or final protective order, an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation or a court-approved consent agreement, when the defendant has prior actual notice of the order or agreement, is a Class D crime, except when the only provision that is violated concerns relief authorized under section 4655, subsection 1, paragraphs D to F. Violation of these paragraphs must be treated as contempt and punished in accordance with law.

2. Warrantless arrest. Notwithstanding any statutory provision to the contrary, an arrest for criminal violation as defined in this section of an order or consent agreement may be made without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of a protective order by telephone or radio communication with a law enforcement agency with knowledge of the order.